
By: **Senator Astle**

Introduced and read first time: February 6, 2004

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **State Government - Judicial Appointees - Representation by Attorney**
3 **General**

4 FOR the purpose of requiring the Attorney General to represent certain judicial
5 appointees in certain legal proceedings; altering the definition of "State
6 personnel" under the Maryland Tort Claims Act to include a certain individual
7 appointed by a court to perform certain limited functions of investigating,
8 testifying, and making a report and recommendation in a particular case;
9 including a certain judicial appointee in the term "State employee or State
10 officer" for purposes of requiring the Attorney General to appear in certain civil
11 actions and special proceedings against a State employee or State officer to
12 represent the employee or officer; making technical changes; and generally
13 relating to representation by the Attorney General and the Maryland Tort
14 Claims Act.

15 BY repealing and reenacting, with amendments,
16 Article - State Government
17 Section 12-101(a)(13) and (14) and 12-304
18 Annotated Code of Maryland
19 (1999 Replacement Volume and 2003 Supplement)

20 BY adding to
21 Article - State Government
22 Section 12-101(a)(15)
23 Annotated Code of Maryland
24 (1999 Replacement Volume and 2003 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
26 MARYLAND, That the Laws of Maryland read as follows:

1

Article - State Government

2 12-101.

3 (a) In this subtitle, unless the context clearly requires otherwise, "State
4 personnel" means:

5 (13) to the extent of a nonprofit organization's activities as a third party
6 payee, and to the extent the nonprofit organization has no other insurance for this
7 purpose, a nonprofit organization that has been approved by the Department of
8 Human Resources or its designee to serve as a third party payee for purposes of
9 providing temporary cash assistance, transitional assistance, or child-specific
10 benefits to Family Investment Program recipients; [or]

11 (14) a student, faculty, or staff member of an institution of higher
12 education who is providing a service under the Family Investment Program in
13 accordance with the provisions of Article 88A, § 47 or § 53 of the Code; OR

14 (15) A JUDICIAL APPOINTEE, INCLUDING A MASTER, EXAMINER,
15 AUDITOR, REFEREE, OR COMMISSIONER AS DEFINED IN RULE 16-814, A RECEIVER AS
16 DEFINED IN RULE 13-102, A PERSONAL REPRESENTATIVE AS DEFINED IN § 1-101 OF
17 THE ESTATES AND TRUSTS ARTICLE, A GUARDIAN AS DEFINED IN § 13-101 OF THE
18 ESTATES AND TRUSTS ARTICLE, AND A GUARDIAN AD LITEM AS DESCRIBED IN § 1-202
19 OF THE FAMILY LAW ARTICLE WHO IS APPOINTED FOR THE LIMITED PURPOSE OF
20 INVESTIGATING, TESTIFYING, AND MAKING A REPORT AND RECOMMENDATION TO
21 THE COURT IN A PARTICULAR CASE.

22 12-304.

23 (a) IN THIS SUBTITLE, THE TERM "STATE OFFICER OR STATE EMPLOYEE"
24 INCLUDES A JUDICIAL APPOINTEE AS DESCRIBED IN § 12-101 OF THIS TITLE.

25 (B) (1) Except as otherwise provided in this Part II of this subtitle, the
26 Attorney General shall appear in a civil action or special proceeding against a State
27 officer or State employee to represent the officer or employee if:

28 (i) the action or proceeding is in a court of the State or of the
29 United States;

30 (ii) the officer or employee submits to the Attorney General a
31 written request for representation;

32 (iii) the Attorney General or a person whom the Attorney General
33 designates investigates the facts on which the action or proceeding is based;

34 (iv) the Attorney General does not find the officer or employee
35 ineligible for representation under subsection (b)(1) of this section; and

36 (v) the officer or employee enters into an agreement as required by
37 § 12-305 of this subtitle.

1 (2) The Attorney General may provide this representation by a deputy
2 attorney general, assistant attorney general, special counsel, or other private counsel.

3 [(b)] (C) (1) The Attorney General shall decline to represent a State officer
4 or State employee if, on the basis of the investigation, the Attorney General finds
5 that:

6 (i) the officer or employee was not acting within the scope of
7 employment of the officer or employee;

8 (ii) the act or omission was malicious; or

9 (iii) the act or omission was grossly negligent.

10 (2) The Attorney General may decline to represent a State officer or
11 State employee who otherwise is eligible for representation if the officer or employee:

12 (i) retains other counsel; or

13 (ii) is covered by insurance that requires the carrier to provide
14 counsel.

15 [(c)] (D) (1) Subject to the requirements of this section, the Attorney
16 General has sole discretion in undertaking to represent the State officer or State
17 employee.

18 (2) A decision of the Attorney General not to represent an officer or
19 employee is inadmissible in any legal action or special proceeding. Reference to the
20 decision may not be made in any hearing or trial.

21 [(d)] (E) This section does not:

22 (1) deprive a State officer or State employee of any right to retain
23 counsel, at the expense of the officer or employee; or

24 (2) prevent the appearance of the Attorney General to protect the
25 interests of the State, even if the officer or employee does not request the appearance.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2004.